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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 06-05-027  
(Filed May 25, 2006)

Order Instituting Rulemaking to Implement the California Renewables Portfolio Standard Program.

Rulemaking 04-04-026  
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING ON  
SAN DIEGO GAS AND ELECTRIC COMPANY'S  
MOTIONS TO FILE DATA UNDER SEAL**

**Summary**

This ruling disposes of various motions filed by San Diego Gas and Electric Company (SDG&E) in this proceeding and its predecessor proceeding, Rulemaking (R.) 04-04-026, for confidential treatment of data related to the Commission's Renewables Portfolio Standard (RPS) program. No party opposes the motions. I discuss the motions individually below.

**1. SDG&E's 8/1/06 Motion**

SDG&E's 8/1/06 motion seeks confidential protection for a portion of its Compliance Filing Regarding Achievement of its 2006 RPS Annual Procurement Target and Project Development Status Report (Status Report). SDG&E does so in accordance with Decision (D.) 06-06-066 (issued in the Commission's "Confidentiality OIR" proceeding, R.05-06-040). That decision

requires that an investor owned utility (IOU) seeking confidentiality protection prove five grounds for such protection:

1. That the material it is submitting constitutes a particular type of data listed in the Matrix, appended as Appendix 1 to D.06-06-066,<sup>1</sup>
2. Which category or categories in the Matrix the data correspond to,
3. That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
4. That the information is not already public, and
5. That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

Using these five factors, SDG&E makes the following claims of confidentiality for the materials, contained in Appendix B to the Status Report:

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<sup>1</sup> The “IOU Matrix” sets forth a variety of utility forecast and historical data related to its procurement of energy that the Commission has deemed confidential.

<b>Data at issue</b>	<b>D.06-06-066 Matrix Requirements</b>	<b>How moving party meets requirement</b>
“Other terms” related to renewable resource contracts under the RPS program	That the material it is submitting constitutes a particular type of data listed in the Matrix	SDG&E asserts information covered in:  Matrix <sup>2</sup> Section VII(G)
	Which category or categories in the Matrix the data correspond to	Matrix Section VII(G)
	That the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	SDG&E states it is complying, without giving detail.
	That the information is not already public	SDG&E states the information has not been made public, and that it does not intend to share the information with anyone with the possible exception of the Procurement Review Group (PRG) pursuant to a non-disclosure agreement.
	That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure	SDG&E asserts the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.

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<sup>2</sup> The “IOU Matrix” – the Matrix at issue here – is Appendix 1 to D.06-06-066.

This information is insufficient to meet SDG&E's burden of proving that its information deserves confidentiality protection under D.06-06-066 and the accompanying Matrix. Matrix Section VII(G) states that RPS contract summaries shall be public. All of the confidential documents are RPS contract summaries.

SDG&E also seeks protection for the same data under Pub. Util. Code § 454.5(g) and GO 66-C. It asserts release of the subject data would put it at an "unfair business disadvantage" if released. However, D.06-06-066 prohibits a utility from claiming confidential treatment of data *covered in the Matrix* for reasons other than those set forth in the Matrix: "Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. . . . Unless and until we change or repeal General Order (GO) 66-C (or opt to leave it intact upon examination), it shall continue to apply to data *not* addressed in the Matrix."<sup>3</sup> Thus, I deny this aspect of SDG&E's motion.

SCE shall either supplement its motion within 15 days of the date of this ruling with the required information (using the table set forth above), or produce the sealed information on that date to the parties to this proceeding and all parties on which it is required to serve its Status Report.

## **2. SDG&E's 7/20/06 Motion**

SDG&E's 7/20/06 motion seeks protection for portions of all versions of its 2006 RPS Procurement Plan. (SDG&E submitted the original version of its 2006 Plan in this proceeding's predecessor proceeding, R.04-04-026, on 12/22/05. It served an amended version on 6/9/06, and filed it on 6/16/06. It filed a

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<sup>3</sup> D.06-06-066, ordering paras. 2 & 4.

further amended version on 7/10/06.) SDG&E seeks to protect the following information in these versions of the Plan:

- a. The percentage of SDG&E's renewable energy purchases that it estimates is currently dependent upon new transmission being built in order to access new resources.
- b. A brief discussion of potential projects with terms that SDG&E considered to be economically attractive, but which were ultimately rejected due to lack of adequate transmission facilities.

SDG&E bases its motion not on D.06-06-066, but on GO 66-C and Pub. Util. Code § 454.5(g). As I state in the previous section, D.06-06-066 now governs all such motions. Therefore, I deny SDG&E's motion because D.06-06-066 prohibits a utility from claiming confidential treatment of data *covered in the Matrix* for reasons other than those set forth in the Matrix.

Further, SDG&E's motion is inconsistent with the general approach to confidentiality the Commission takes in D.06-06-066. SDG&E does not specify which information it is seeking to protect, or follow the five steps D.06-06-066 requires.

Finally, now that 2006 is over, it may be that SDG&E's data are no longer confidential.

Within 15 days of this ruling, SDG&E shall either serve the information (or a notice of availability) on all parties to R.06-05-027 and all parties on which it is required to serve its 2006 RPS Procurement Plan or file a motion seeking continued confidentiality under the terms of D.06-06-066.

### **3. SDG&E's 6/9/06 Filing**

On 6/9/06, SDG&E filed in R.04-04-026 portions of its Amended 2006 Short-Term Renewable Procurement Plan under seal. The docket card for this

proceeding does not show an accompanying motion. This may be an oversight at the Commission's end. Within 15 days of this ruling, I ask SDG&E to send me a copy of its 6/9/06 motion, if there was one, file a new motion seeking continued confidentiality under the terms of D.06-06-066, or serve the information (or a notice of availability) on all parties to R.06-05-027 and parties on whom it was required to serve its Amended 2006 Short-Term Renewable Procurement Plan.

**4. SDG&E's 12/22/05 Motion**

SDG&E's 12/22/05 motion in R.04-04-026 seeks permission to file portions of its 2006 Short-Term RPS Procurement Plan under seal. Because the motion was filed so long ago, it may be that the material is no longer confidential. Within 15 days of this ruling, SDG&E shall either serve the information (or a notice of availability) on all parties to R.06-05-027 and all parties on which it was required to serve its 2006 Short-Term RPS Procurement Plan, or file a motion seeking continued confidentiality under the terms of D.06-06-066.

**IT IS RULED THAT:**

1. San Diego Gas and Electric Company (SDG&E) shall comply with this ruling by either serving information I find not confidential (or a notice of availability) on the service list for this proceeding and the parties on whom it was required to serve the information that is the subject of each motion, or, where specified, file a new or revised motion addressing the deficiencies discussed in connection with each motion. SDG&E shall take either action within 15 days of this ruling.

2. Where I rule that information is confidential, SDG&E shall produce it, upon request, to non-market participants and market participants, as defined in Decision (D.) 06-12-030, according to the procedures set forth in that decision.

3. In all future filings, SDG&E shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the Matrix. This should make the task of ruling on future motions easier.

Dated April 30, 2007, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson

Administrative Law Judge

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability is current as of today's date.

Dated April 30, 2007, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
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